

1987

Roy City v. Franchot L. Olson : Brief of Appellant

Utah Court of Appeals

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Roger Dutson; Deborah Badger; Attorney for Respondent.

Franchot L. Olson; Apellant pro se.

Recommended Citation

Brief of Appellant, *Roy City v. Olson*, No. 870122 (Utah Court of Appeals, 1987).
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F.F.J.
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IN THE SUPREME COURT OF THE STATE OF UTAH

DOCKET

870122-CA

ROY CITY, a Municipal Corporation,)

Plaintiff-Respondent,)

vs.)

FRANCHOT L. OLSON)

Defendant-Appellant)

Case No. 870122-CA

#2

BRIEF OF APPELLANT

Appeal from the Ruling On Appeal made by Ronald O. Hyde,
Presiding, in the District Court of Weber County, State of Utah.

Appeal from the Ruling from the hearing made by Phillip
H. Browning, Presiding, in the Third Circuit Court, Roy Department.

FRANCHOT L. OLSON
145 North Fouth West
Logan, Utah 84321

Appellant

ROGER DUTSON
DEBORAH BADGER
5051 South 1900 West
Roy, Utah 84067

Attorneys for Respondent

RECEIVED

MAY 06 1986

Court of Appeals

IN THE SUPREME COURT OF THE STATE OF UTAH

ROY CITY, a Municipal Corporation,)

Plaintiff-Respondent,)

vs.)

Case No. 870122-CA

FRANCHOT L. OLSON)

Defendant-Appellant)

BRIEF OF APPELLANT

Appeal from the Ruling On Appeal made by Ronald O. Hyde,
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FRANCHOT L. OLSON
145 North Fouth West
Logan, Utah 84321

Appellant

ROGER DUTSON
DEBORAH BADGER
5051 South 1900 West
Roy, Utah 84067

Attorneys for Respondent

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BRIEF OF APPELLANT

STATEMENT OF THE NATURE OF THE CASE

Appeal from the Ruling On Appeal made by Ronald O. Hyde, Presiding, in the District Court of Weber County, State of Utah.

Appeal from the Ruling from the Hearing made by Phillip H. Browning Presiding, in the Third Circuit Court, Roy Department.

DISPOSITION IN THE COURT BELOW

The court below denied Appellant his motion to Vacate and the plaintiff's motion to dismiss defendant's motion to Vacate is granted.

RELIEF SOUGHT ON APPEAL

Declare that the Roy City Ordinance 11-3-4 is Void.
Reversal of conviction and restoration of costs Appellant has spent.
Award Appellant all costs and attorney fees expended in defending against unlawful and unconstitutional prosecution of the defendant by the Roy City prosecutor in the name of Roy City, a municipal corporation;
Such other relief as is just and equitable.

STATEMENT OF THE FACTS

The morning of June 3, 1985 an arrest warrant was issued on a information signed by Carol Olson and given to officer Donahoo to serve on defendant. It is a fact in this case that the Arrest Warrant and the Information filed against the defendant were issued before the purported act upon which conviction was made even occurred. The conviction, judgment and sentence are void, for lack of jurisdiction, as a matter of law and constitute an unconstitutional denial of due process of law and equal protection of law under the Constitution

Constitution of the State of Utah and under the Constitution of the United States Of America.

On the afternoon of June 5, 1985 the defendant appeared voluntarily at the police department, was booked, taken to court and arraigned on the charge of custodial interference under the Roy City Ordinance specified in the Information as a Class "B" Misdemeanor. Custodial Interference is a Class "A" Misdemeanor. A non-jury trial was held on June 19, 1985 and the court entered a judgment of conviction upon a decision by the court of "Guilty". The court failed to obtain jurisdiction. The court lacked jurisdiction to prosecute the defendant on the Information alleging that the defendant committed a Class "B" Misdemeanor when as a matter of law at the time the offense was alleged to have occurred it was a Class "A" Misdemeanor under the laws of the State of Utah and therefore the Roy City Ordinance 11-3-4(1) was Void at the Arraignment, and at the trial which took place.

The Utah Code of Criminal Procedure provides that:

1. The procedure in criminal cases shall be as prescribed in this title, the rules of criminal procedure, and such further rules as may be adopted by the supreme court of Utah. (77-1-2)
2. No person shall be punished for a public offense until convicted in a court having jurisdiction. (77-1-4)
3. Unless otherwise provided by law, no information may be filed charging the commission of any felony or class A Misdemeanor unless authorized by a prosecuting attorney. (77-2-1)
4. A criminal action for any violation of a state statute shall be prosecuted in the name of the State. A criminal action for violation of any county or municipal ordinance shall be prosecuted in the name of the governmental entity involved. (77-1-5)

IN THE SUPREME COURT OF THE STATE OF UTAH

ROY CITY, a Municipal Corporation,)	
Plaintiff-Respondent,)	
)	
vs.)	
)	Case No. 870122-CA
FRANCHOT L. OLSON)	
Defendant-Appellant)	
<hr/>)	

BRIEF OF APPELLANT

STATEMENT OF THE FACTS

MEMORANDUM OF LAW

The defendant offers this Memorandum of Law in support of his Motion to Vacate filed in this court on the 13th day of February 1987. The grounds for the Motion to Vacate are:

1. The Information was unlawful and failed to give the court jurisdiction to try the defendant on the charge of "custodial interference", a Class "A" Misdemeanor under the provisions of Utah Code 1953 Annotated as Amended, Section 76-5--303, superceding and voiding all municipal ordinances in conflict therewith as a matter of natural operation of law wherein all city ordinances in conflict with the Laws of the State are necessarily void;

2. Class "A" Misdemeanors cannot be prosecuted in the name of a municipal corporation or a county, but can only be prosecuted in the name of the State of Utah, and only upon an information approved by the prosecuting attorney authorized to prosecute in the name of the State of Utah;

3. Prosecution of a person accused of committing a class A misdemeanor under the provisions of a state statute by commencing a prosecution against the accused under provisions of a city ordinance holding the act a class B misdemeanor is an unconstitutional denial of equal protection of the law of the state, there being a conflict of law between the state statute and the city ordinance, subjecting the defendant to different punishment for the same act in different jurisdictions;

4. When an act constituting a class A misdemeanor is prosecuted as a class B misdemeanor denying the defendant of protections he would have if charged with committing the class A misdemeanor, he is not prosecuted according to law and is denied due process of law in violation of the Constitution of the State of Utah, Article 1, Sections 7 and 12, and other provisions therein and also in violation of the Constitution of the United States of America, Article of Amendment IV, V, VI and XIV.

5. The city of Roy, Utah is a municipal corporation and is limited by Utah statute to enact ordinances for public offenses of class B misdemeanors or lessor offences only, unless specifically authorized by statute, by Utah Code 1953 Annotated as Amended at Section 10-3-703, which states:

Unless otherwise specifically authorized by statute, the governing body of each municipality may provide a penalty for the violation of any municipal ordinance by a fine not to exceed the maximum class B misdemeanor fine under § 76-3-301 or by a term of imprisonment up to six months, or by both the fine and term of imprisonment.

6. Under the provisions of § 76-3-301(4) it states:

A person who has been convicted of an offense may be sentenced to pay a fine not exceeding \$299 when the conviction is of a class B or C misdemeanor or infraction.

7. Where there is a conflict between city ordinances and state statutes the statutes prevail over the city ordinances. This principle was declared in Williams v. Summit County.

Statute law will always prevail over ordinances
Williams V. Summit County, 41 Utah 72, 123 P.
938 (1912)

8. Jurisdiction of the Circuit courts is established by § 78-4-5(3) and states that "the circuit courts shall have exclusive jurisdiction of all cases arising under or by reason of violation of any municipal ordinance involving persons 18 years of age and over in those municipalities in which a municipal department of the circuit court exists or has been created." Roy city has such a department.

9. Municipalities do not have power to pass ordinances to impose penalties for offenses which are classified by statute as class A misdemeanors and circuit courts do not have statutory jurisdiction to try offenses classified as class A misdemeanors in the municipal departments of such courts.

City court does not have jurisdiction over class A misdemeanor. U.C.A. 1953, 76-3-204(1), 78-4-16; U.C.A. 1953, 78-5-4(3), Laws 1951, c. 58.

Van Dam v. Morris, 571 P.2d 1325.

Where prosecution for misdemeanor was begun by complaint, proper procedure for invoking original jurisdiction was not followed and district court was powerless to act.

Hakki v. Faux, 396 P.2d 867, 16 Utah 2d 132.

10. The act complained of in the Information filed in case number 85 CM 112 in the Roy department of the Circuit Court in and for Weber County, State of Utah, was in the nature of a class A misdemeanor under Utah statute thus requiring an Information to be filed in the name of the State of Utah alleging the criminal act and such Information must be signed by a state prosecutor, not a city prosecutor who is only authorized to bring criminal actions against defendants in the name of the municipality he represents. The Utah Constitution provided at Article VIII, Section 10, that:

The powers and duties of county attorneys, and such other attorneys for the state as the legislature may provide, shall be prescribed by law. In all cases where the attorney for any county, or for the state, fails or refuses to attend and prosecute according to law, the court shall have power to appoint an attorney pro tempore. Utah Const. VIII, 10.

11. The prosecuting attorney in this case was not authorized to bring an action in the name of the State of Utah nor was the action brought in the name of the State of Utah as required by the Utah Constitution at Article VIII, Sec. 18.

12. Therefore, the Information was void, the arrest warrant was void, the arraignment was void, the trial was void, the conviction was void, the judgment, including the sentence of fine for 150 dollars, 30 days in jail, and suspension upon payment and probation, is void on the face of the record for lack of jurisdiction and should be vacated as a matter of law because the court acted without having jurisdiction over the person or the subject matter in this case, and having never obtained lawful and constitutional jurisdiction the prosecution

constituted an unlawful and unconstitutional denial to defendant of due process of law in violation of Utah Constitution Article I, Sections 7 and 12, and Articles of Amendment IV, V, VI and XIV of the Constitution of the United States and also denied the defendant in this case equal protection of the law in violation of Article I, Section 2, of the Utah Constitution and. Article of Amendment XIV of the Constitution of the United States of America.

WHEREFOR, the Motion to Vacate submitted to the Court in this matter on the 13th day of February 1987 A.D., should be granted and the court should issue an order to:

1. Vacate the Judgment including the sentence on the grounds that it is void for lack of jurisdiction over both the person of the defendant and the subject matter of the offense and that the matter was improperly before the court as a matter of law and that the prosecution was unconstitutional because;

(1) It violated the defendant's constitutional right to due process of law under Article I Sections 7 and 12 of the Utah Constitution and under the IV, V, VI, and XIV Amendments to the Constitution of the United States of America,

(2) It deprived the defendant of his right to equal protection of the law guaranteed, secured and protected by Article I, Section 2 of the Utah Constitution and Amendment XIV of the Constitution of the United States of America and Article IV of the Constitution of the United States of America;

2. Declare that Roy City Ordinance 11-3-4 (Custodial Interference) is unconstitutional and void on the grounds it

is in conflict with the state statute Section 76-5-303 which made the offense a class A misdemeanor thereby amending and repealing all laws and ordinances in the State of Utah which are in conflict therewith as a matter of law;

3. Declare that the Roy City Ordinance 11-3-4 is void on the grounds the subject matter "custodial interference" is pre-empted by state law rendering the subject matter beyond the scope and jurisdiction of the municipal ordinance making power and authority of Roy City's governing body;

4. Require the Court to return the amount of the fine (150 dollars) unlawfully and unconstitutionally imposed upon the defendant to the defendant with interest at the highest annual rate permitted by law;

5. Award the defendant all costs and attorney fees expended in defending against the unlawful and unconstitutional prosecution of the defendant by the Roy City prosecutor in the name of Roy City, a municipal corporation; and

6. Such other relief as is just and equitable.

Dated this _____ day of February 1987 A.D.

FRANCHOT L. OLSON
Defendant

Certificate of Service

I certify that I delivered a true and correct copy of the above memorandum of law to the office of the Roy City attorney at 5051 South 1900 West Roy, Utah 84067, on the _____ day of February 1987 A.D.

SUMMARY OF ARGUMENTS

Appellant Olson was deprived of equal protection of the law on a information signed by Carol Olson not by a County Attorney witch was used to obtaine an Arrest Warrant befor the purported act upon which conviction was made accured. Appellant was convicted of a crime that happened after the Arrest Warrant had been issued. Roy City was acting beyond the scope of its power at the time it commenced the prosecution and the case was not properly before the court leaving the court without jurisdiction over the defendant or the subject matter and therefore the conviction and judgment are void on the face of the Record. The conviction and judgment are contrary to law and vâolate the Constitution of the State of Utah, Article I, 1,2,7,10,12,and Article VIII, Section 10, and violate the equal protection,due process and rights of an accused, clauses of the Constitution Of The United States under Article III, Article IV, and Amendments IV,V,VI,and XIV.

The powers and jurisdiction of the circuit court are derived from laws made pursuant to the Utah Constitution which are not contrary to the Constitution of the United States Of America. The conviction in this case was made contrary to the laes of Utah and in violation of the Utah Constitution,and denied the Appellant of Rights guaranted, protected and secured by the Constitution of the State of Utah and the laws and Constitution Of THE United States Of America. Reversal as a matter of law and the Roy City Ordinance under whitch the improper prosecution took place be declared void on the grounds it is unconstitut ional and denies both due process of law. No proper information by an authorized officer in the State of Utah was filed, and different punishments are provided for the same conduct pursuant to legislative action of the State Legislature and governing body of Roy City and all

ARGUMENT

POINT 1

THE TRIAL COURT AND DISTRICT COURT BOTH COMMITTED ERROR THIS CASE WAS NOT PROPERLY BEFORE THE COURT LEAVING THE COURT WITHOUT JURISDICTION APPELLANT FURNISHED BOTH THE CITY PROSECUTOR AND THE COURT WITH MORE THAN AMPLE GROUNDS TO VACATE THE CONVICTION AND JUDGMENT AND TO RETURN THE UNLAWFUL AND UNCONSTITUTIONAL FINE IMPOSED UPON THE ACCUSED APPELLANT.

ARTICLE I, Section 12 of the Constitution of the State of Utah provides that no person shall be deprived of life, liberty or property without due process of law. The appellant was so deprived of his liberty without due process of law and was held to answer for a crime that was improperly before court. Class "A" Misdemeanor cannot be prosecuted in the name of a municipal corporation or a county, but can only be prosecuted in the name of the State Of Utah, and only upon an information approved by the prosecuting attorney authorized to prosecute in the name of the State.

LESSOR OFFENCES ONLY, UNLESS SPECIFICALLY AUTHORIZED BY STATUTE, BY UTAH CODE 1953 ANNOTATED AS AMENDED AT SECTION 10-3-703.

UNDER THE PROVISIONS OF 76-3-301 (4).

STATUTE LAW WILL ALWAYS PREVAIL OVER ORDINANCES:

Williams V. Summit County, 41 Utah 72, 123 P.
938 (1912)

JURISDICTION OF THE CIRCUIT COURT IS ESTABLISHED BY 78-4-5 (3).

MUNICIPALITIES DO NOT HAVE POWER TO PASS ORDINANCES TO IMPOSE PENALTIES FOR OFFENSES WHICH ARE CLASSIFIED BY STATUTE AS CLASS A MISDEMEANORS AND CIRCUIT COURT DO NOT HAVE STATUTORY JURISDICTION TO TRY OFFENSES CLASSIFIED AS CLASS A MISDEMEANORS IN THE MUNICIPAL DEPARTMENTS OF SUCH COURTS.

U.C.A. 1953, 76-3-204(1), 78-4-16; U.C.A. 78-5-4(3), Laws 1951, c. 58.
Van Dam v. Morris, 571 P.2d 1325.
Hakki v. Faux, 396 P.2d 867, 16 Utah 2d 132.

THE UTAH CONSTITUTION PROVIDED AT ARTICLE VIII, SECTION 10.

CONCLUSION

The defendant- Appellant in this case was deprived of his Constitutional right to due process of law under both the Utah and the United States Constitution. Was not given equal protection of the law and was deprived of his liberty by persons acting in violation of the Constitution of the United States and of the Constitution of the State of Utah. The Plaintiff's Motion to Dismiss should have been denied on the grounds that the City was acting beyond the scope of its power at the time it commenced the prosecution and the Case was not properly before the Court leaving the Court without jurisdiction over the defendant or the subject matter and therefore the conviction and judgment are void on the face of the Record.

Finley P. Gridley failed to perfect Appellant appeal Appellant was left to his own imagination and devices in order to perfect his appeal to the Supreme court of the State of Utah. The conviction should be reversed and the Appellant should be compensated for his fine and time in which he was deprived of his liberty.

Dated this 3 day of May 1987.

FRANCHOT L. OLSON
Appellant

CERTIFICATE OF SERVICE

I certify that I mailed a set of four copies of the above brief to Roger Dutson 5051 South 1900 West Roy, Utah 84067 postage prepaid.

FRANCHOT L. OLSON

IN THE SUPREME COURT OF THE STATE OF UTAH

ROY CITY, a Municipal Corporation,)

Plaintiff-Respondent,)

vs.)

FRANCHOT L. OLSON)

Defendant-Appellant)

Case No. 870122-CA

ADDENDUM TO

BRIEF OF APPELLANT

Appeal from the Ruling On Appeal made by Ronald O. Hyde,
Presiding, in the District Court of Weber County, State of Utah.

Appeal from the Ruling from the hearing made by Phillip
H. Browning, Presiding, in the Third Circuit Court, Roy Department

FRANCHOT L. OLSON
145 North Fouth West
Logan, Utah 84321

Appellant

ROGER DUTSON
DEBORAH BADGER
5051 South 1900 West
Roy, Utah 84067

Attorneys for Respondent

ROY CITY,
Plaintiff-Respondent,
vs.
FRANCHOT OLSON
Defendant-Appellant,

Comes now FRANCHOT OLSON and appeals his conviction & DENIAL OF MOTION TO VACATE pursuant to Utah code rule 26 (1980).

FENLEY P. GRIDLEY, attorney, for defendant filed a notice of appeal but failed to perfect the appeal for the defendant.

The defendant recently learned that the Information, Arrest Warrant, Arraignment, Trial, Conviction upon decision of guilty, Judgment and Sentence were all obtained without due process of law and by denial thereof and by denial of equal protection of the law in violation of the Constitution of the State of Utah and of the Constitution of the United States of America.

13

IN THE SUPREME COURT OF THE STATE OF UTAH

ROY CITY,

Plaintiff-Respondent,

vs.

FRANCHOT OLSON,

Defendant-Appellant

APPEAL OF CONVICTION AND

DENIAL OF MOTION TO VACATE

Case No. ~~85-CM-112~~ ¹⁶ 16428

NOTICE OF APPEAL

Comes now FRANCHOT OLSON and appeals his conviction and DENIAL OF MOTION TO VACATE pursuant to Utah code rule 26 (1980).

If the Roy City, ordinance is valid then the State statute is void.

DEBORAH BADGER
ROY CITY DEPUTY PROSECUTOR
5051 South 1900 WEST
ROY, UTAH 84067
801 825-2205

FRANCHOT OLSON
PRO se
1145 North L West
LOGAN, UTAH 84321
801 753-0211

OFFICE OF THE
WEBER COUNTY CLERK
MUNICIPAL BUILDING
OGDEN, UTAH 84401
(801) 399-8481

RICHARD R. GREENE
WEBER COUNTY CLERK

April 3rd 1987

In the matter of CR #16983, there is no filing
fee for an appeal on this matter as it is a
criminal case. It has been filed at no charge.

Deborah W. Mathis
Deputy Clerk.

by Franchot-L. Olson

ROY Department
Received a copy of appeal this 4-10-8

C-M Butler

Deborah Badger
Roy City Deputy Prosecutor
5051 South 1900 West
Roy, Utah 84067
801 825-2205 ext 30

IN THE THIRD CIRCUIT COURT OF THE STATE OF UTAH

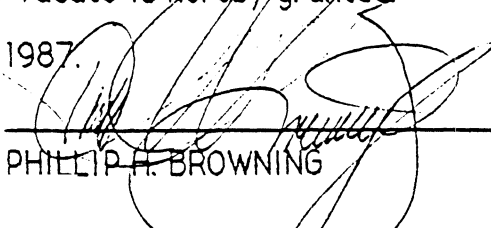
COUNTY OF WEBER, ROY DEPARTMENT

ROY CITY, a Municipal corporation,)	
)	
Plaintiff,)	
)	
vs.)	ORDER
)	
FRANCHOT OLSON,)	Case No. 85 CM 112
)	
Defendant.)	

This matter having come on for hearing before the Third Circuit Court, Honorable Phillip H. Browning presiding, on March 11, 1987, at 1:30 p.m., memoranda of plaintiff and defendant having been filed and oral arguments by plaintiff and defendant having been made, it is HEREBY ORDERED:

That the defendant's Motion to Vacate is denied and the plaintiff's Motion to Dismiss Defendant's Motion to Vacate is hereby granted.

Dated this 18 day of March, 1987.



PHILLIP H. BROWNING

I certify that I mailed a true and correct copy of the foregoing Order to defendant Franchot L. Olson, 145 N. Fourth W, Logan, Utah 84321, on the 18th day of March, 1987.



Deborah Badger

IN THE CIRCUIT COURT OF ROY CITY, WEBER COUNTY, STATE OF UTAH

BEFORE THE HONORABLE PHILLIP H. BROWNING, CIRCUIT JUDGE

CASE RECORD

Def: FRANCHOT OLSON DOB: 1-22-50 Case No.: 85-CM-0112

Address: 145 NORTH 4TH WEST -- LOGAN Offense: Custodial Interference
Date: 6-3-85
Phone No. 753-0214 Location: 5829 So. 2550 W. - Roy
Signed by: Carol Olson

Summons issued on _____, returnable on _____

-3-85 AFFIDAVIT AND REQUEST FOR A/W ISSUED AND GIVEN TO OFFICER DONOHOO TO SERVE
Defendant booked on _____, due in court on _____

Bail bondsman: _____ OR through AP&P _____ OR through court _____

Tape No. 3R-227 Date: 6-6-85

Plea cont. until 6-10-85 @ 9:00 a.m. Bail to cont. _____ OR ~~XXXXXX~~ X Release by court

Tape No. _____ Date: _____

Plea of _____ entered by _____ set for _____

REMARKS: 6-7-85 - Plea of NOT GUILTY by Findley P. Gridley, esq. confirmed with Sue
for Non-Jury 6-19-85 @ 1:30 p.m.. rf

receipt
34073

0000 2CA 07/15/85 1701 150.00
~~CERTIFICATE OF PROCEEDINGS~~

DISPOSITION

COUNTY OF WEBER)

STATE OF UTAH)

Tape No. 3R-241 Date: 6-19-85
& 3R-242

CITY NON-JURY TRIAL -- City Attvn: Roger Dutson esq.

I do hereby certify that the a
foregoing are the documents and a full
copy of the proceedings herein.

DEFENDANT: Present and represented by Findley P. Gridley Esq DATED 7-31-85

JUDGMENT: Guilty Sentencing cont. to 6-24-85

Clerk of Circuit

6-24-85 - fine 340.00
SENTENCE: \$150.00 and 30 da s, 30 days susp. upon pymt. of fine and prob. for
days with Roy Court or NO LIKE OFFENSE.

STAY ON PAYMENT OF FINE UNTIL 7-12-85

7-23-85 - Notice of Appeal and statement on appeal filed this date.

7-29-85 - Monies transfered this date to Bail Trust

7-30-85 - Case sent to District court this date.

1/0/86 Case remanded back to Roy Circuit Court for enforcement of Judgment.

\$150 bail posted transferred from Bail Trust this date per disbursement schedule.

CIRCUIT COURT, STATE OF UTAH/WEBER COUNTY, ROY DEPARTMENT

ROY CITY,

PLAINTIFF
VS.

INFORMATION

FRANCHOT OLSON
5829 South 2550 West
Roy, Utah 84067

CRIMINAL NO. 85 CM 112

DEFENDANT

DOB: 1-22-50

RPD- #

THE UNDERSIGNED HAS REASON TO BELIEVE AND STATES UNDER OATH THAT THE DEFENDANT, ON OR ABOUT THE 3 DAY OF June, 19 85, AT OR NEAR 5829 S. 2550 W. ROY CITY, UTAH, COMMITTED THE OFFENSE OF:

- ☐ THEFT-By stealing property described below (RCO 11-4-10).
☐ THEFT-By receiving stolen property described below (RCO 11-4-14).
☐ ASSAULT-By intentionally injuring victim described below (RCO 11-3-1 (1) (a)).
☐ ASSAULT-Show of force or violence caused victim to fear imminent serious bodily injury (RCO 11-3-1 (1) (c)).
☐ CRIMINAL MISCHIEF-By damaging property of another (RCO 11-4-2).
☐ TRESPASS-By entering or remaining unlawfully on property intending to cause annoyance, injury or damage to person or property (RCO 11-4-6 (2) (a) (i)).
☐ TRESPASS-Entering or remaining upon property with notice against same given or obvious (RCO 11-4-6 (2) (b)).
☐ ISSUING BAD CHECK-Issuing or passing check for payment knowing it would not be paid (RCO 11-4-20).
☐ DISORDERLY CONDUCT-Intentionally or recklessly causing public inconvenience, annoyance or alarm and;
 ☐ engages in fighting or in violent, tumultuous, or threatening behavior; OR
 ☐ makes unreasonable noises in a public place; OR
 ☐ makes unreasonable noises in a private place which could be heard in a public place; OR
 ☐ engages in abusive or obscene conduct in public (RCO 11-7-2).
☐ INTOXICATION-Publicly intoxicated to a degree of endangering himself or another (RCO 11-7-14).
☐ LEWDNESS-Exposing his private parts or committing any act of gross lewdness (RCO 11-7-18).
☐ ILLEGAL POSSESSION OF ALCOHOL-Purchasing, consuming or possessing alcohol under age 21 (RCO 21-1-16).
☐ ILLEGAL POSSESSION OF CONTROLLED SUBSTANCE-to-wit: _____ (RCO 11-10-2).
☐ RESISTING OR INTERFERING WITH ARREST-(RCO 11-6-11).
☐ TELEPHONE HARASSMENT-(RCO 11-7-6).
☐ FALSE INFORMATION TO POLICE OFFICER-(RCO 11-6-31).
☐ BEER LICENSE-Open after lawful hours (RCO 21-1-12 (h)).
☐ BUILDING OR ZONING CODE VIOLATION, to-wit: _____
☐ FAILURE TO OBTAIN A BUSINESS LICENSE (RCO 17-1-2).
☐ ALLOWING DOG(S) TO ROAM (RCO 16-1-7).
☐ FAILURE TO LICENSE DOG(S) (RCO 16-1-5).
☐ FAILURE TO APPEAR before Court on written promise (RCO 11-6-16).
☒ OTHER CUSTODIAL INTERFERENCE (RCO 11-3-4(1))

This violation is a: Class "B" Misdemeanor

VICTIM:

PROPERTY/VALUE:

Witnesses: _____

Carol Olson
COMPLAINING WITNESS Carol Olson

SUBSCRIBED and sworn to before me

this 3 day of June, 19 85

[Signature]
CIRCUIT COURT JUDGE

Jan 8 12
Q. case
file
SHB

IN THE DISTRICT COURT OF WEBER COUNTY, STATE OF UTAH

ROY CITY, a Municipal corporation,

Plaintiff/Respondent,

vs.

FRANCHOT OLSON,

Defendant/Appellant.

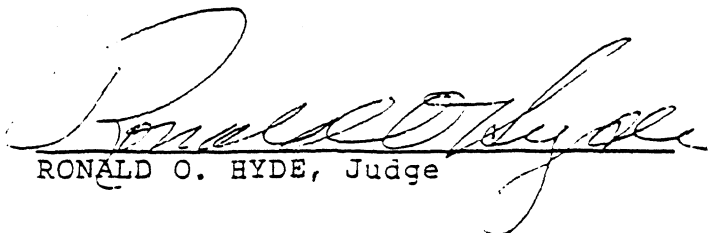
RULING ON APPEAL

Case No. 16988

This case having been submitted on the default of the appellant to prosecute his appeal, it is ordered that said appeal be, and the same is, dismissed.

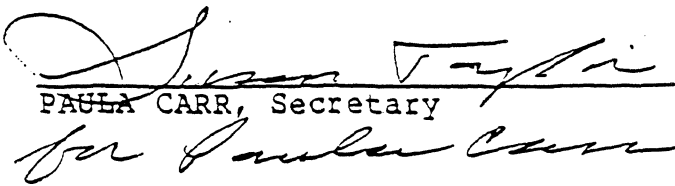
The case is ordered remanded to the Roy Department of the Third Circuit Court for enforcement of judgment.

DATED this 27 day of December, 1985.


RONALD O. HYDE, Judge

CERTIFICATE OF MAILING

I hereby certify that I mailed a true and correct copy of the foregoing Memorandum Decision to Roger S. Dutson, Attorney for Plaintiff/Respondent, 5051 South 1900 West, Roy, Utah 84067; Findley P. Gridley, Attorney for Defendant/Appellant, 635 25th Street, Ogden, Utah 84401; Honorable Phillip S. Browning, Circuit Court Judge, 5051 South 1900 West, Roy, Utah 84067, on this day of December, 1985.

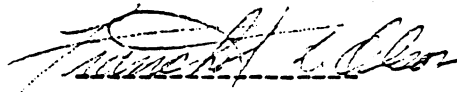

PAULA CARR, Secretary
for Paula Carr

IN THE THIRD CIRCUIT COURT OF THE STATE OF UTAH
COUNTY OF WEBER, ROY DEPARTMENT

This is a request for transcript of hearing on March 11, 1987.

Dated this 20, day of March 1987.

Sincerely,



FRANCHOT L. OLSON

RECEIVED

APR 17 1987

CIRCUIT COURT.
ROY, CITY, DEPT.



OGDEN
CIRCUIT
COURT


THIRD CIRCUIT COURT
STATE OF UTAH
Ogden Department

OGDEN DEPARTMENT
George D. Berdey, Jr.

April 20, 1987

This is to certify that I duplicated tapes for Franchot Olson for a Roy Case # 84 CM 112, also known as Dist. Ct. Case # 16988. The tapes were recorded on 11-26-86 and picked up that day or shortly thereafter.

Signed,


Kathy Hopper
Deputy Clerk

Municipal Building, 2nd Floor
2549 Washington Blvd. Ogden, Utah 84401



OGDEN
CIRCUIT
COURT

THIRD CIRCUIT COURT
STATE OF UTAH
Ogden Department

OGDEN DEPARTMENT
George D. Berkeley, Jr.

April 23, 1987

FRANCHOT OLSON
145 NORTH 4 WEST
LOGAN UT 84321

Dear Mr. Olson:

Your tape duplications are prepared. We are awaiting your
fee of \$6.50.

Sincerely yours,


Kathy Hopper

FRANCHOT L. OLSON
Defendant
145 North Fourth West
Logan, Utah 84321
Telephone: (801) 753-0214

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT OF THE STATE OF UTAH
COUNTY OF WEBER, ROY DEPARTMENT

ROY CITY, a Municipal Corporation,)	AFFIDAVIT
)	SUPPORTING DEFENDANT'S
Plaintiff,)	MOTION TO VACATE
)	
vs.)	
)	
FRANCHOT OLSON,)	Case No. <u>85 CM 112</u>
)	
Defendant.)	

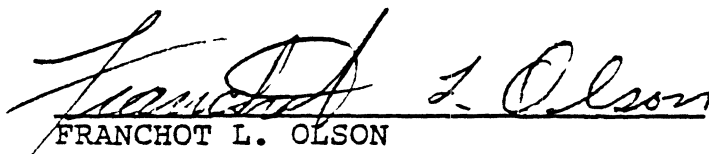
AFFIDAVIT

STATE OF UTAH)
) ss.
County of Weber)

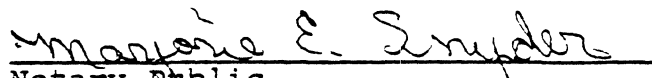
I, Franchot L. Olson, having been first duly sworn do hereby depose and say, that I am the defendant in the above captioned case, and that I was not prosecuted by means of an Information charging me with committing a class A misdemeanor and having been signed by a prosecuting attorney for the State of Utah, but in fact was prosecuted for committing a class B misdemeanor under a void Roy City Ordinance on an Information signed only by a complainant, Carol R. Olson, and I was thereby denied due process of law and equal protection of the law in in this court when it lacked jurisdiction over either my person or the subject matter of custodial interference, a class A misdemeanor under the laws of the State of Utah.

I believe that the judgment is void and that I am entitled to the relief prayed for in my Motion to Vacate filed in this court on the 13th day of February 1987 and supported by this affidavit and the Memorandum of Law supporting my Motion to Vacate filed with this affidavit.

Dated this 17th day of February 1987 A.D.


FRANCHOT L. OLSON
Affiant

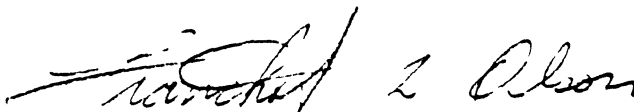
I hereby certify that the affiant, Franchot L. Olson, personally appeared before me a notary public and, having been first duly sworn, subscribed the foregoing affidavit on the 17 day of February 1987 A.D.


Notary Public
Residing at: 3011 Lake Co.

My commission expires: Sept 18, 1988

Certificate of Service

I certify that I delivered a true and correct copy of the above memorandum of law to the office of the Roy City attorney at 5051 South 1900 West Roy, Utah 84067, on the 17 day of February 1987 A.D.


24 FRANCHOT L. OLSON

THE SUPREME COURT OF THE STATE OF UTAH

ROY CITY, a Municipal Corporation,)	
)	
Plaintiff and Respondent,)	DOCKETING STATEMENT
V.)	
)	SUPREME COURT No. 870122-CA
FRANCHOT L. OLSON,)	
)	
Defendant and Appellant.)	

Pursuant to the provisions of Rule 9 of the Utah Rules of Appellate Procedure, the appellant files this docketing statement.

1. Jurisdiction to hear this appeal is conferred on this Court by Utah Code Annotated, 1953, 78-2-2, subsection (1)(2)(3)(A)(B)(C)(F)(5).

2. This appeal is from an order of conviction on June 19, 1985 of Custodial Interference also entered by THE THIRD CIRCUIT COURT OF THE STATE OF UTAH COUNTY OF WEBER, ROY DEPARTMENT Honorable Phillip H. Browning presiding, on March 11, 1987 by Motion to Dismiss defendants Motion to Vacate IN THE DISTRICT COURT OF WEBER COUNTY, STATE OF UTAH Honorable Ronald O. Hyde, Judge dismissing on default said appeal.

3. The order appealed was entered on the 18 day of March, 1987 Roy Department. Ruling on Appeal Case No. 16933 dated the 27 day of December, 1985. Defendant filed the notice of appeal in the lower court on 6 day of April, 1987.

4. The facts are as follows: Roy City was acting beyond the scope of its power the conviction and judgment are void on the face of the Record. The conviction and judgment are contrary to law. It is a fact in this case also that the Arrest Warrant and the Information filed against the defendant were issued before the purported act upon which conviction was made even occurred.

Finley P. Gridley, attorney, for the defendant filed a notice of appeal but failed to perfect the appeal for defendant. Roy City Court clerk after asking Roger Dutson city attorney refused to let defendant have the transcripts of the trial dated 7-30-85 so defendant could not perfect his appeal.

5. The issues are: The Information, Arrest Warrant, Arraignment Trial, conviction upon decision of guilty, Judgment and Sentence were all obtained without due process of law and by denial thereof equal protection of the law in violation of the Constitution of the STATE OF UTAH and of the UNITED STATES OF AMERICA.

6. Controlling law is: Information alleging that the defendant committed a class "B" Misdemeanor when as a matter of law at the time the offense was alleged to have occurred it was a class "A" Misdemeanor under the provisions of Utah Code 1953 Annotated as Amended, Section 76-5-303, superceding and voiding all municipal ordinances in conflict therewith.

7. IN THE SUPREME COURT OF THE STATE OF UTAH Case No. 860374

8. Attached are: The judgment appealed, findings made by the court, and defendants notice of appeal.

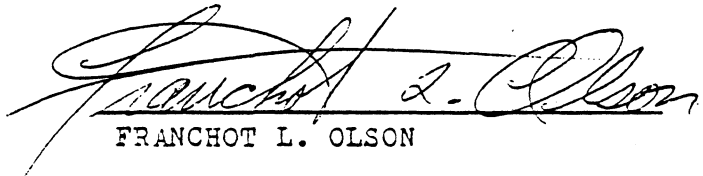
Dated this _____ day of _____, 1987.

FRANCHOT L. OLSON filing pro se

CERTIFICATE OF MAILING

I certify that I mailed a true and correct copy of the docketing statement to the office of the Roy City attorney at 5051 South 1900 West Roy, Utah 84067, and the UTAH COURT OF APPEALS 400 Midtown Plaza 230 South 500 East SALT LAKE CITY, UTAH 84102.

On this 28 day of April, 1987.


FRANCHOT L. OLSON